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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92044526
Party	Plaintiff Love in Love, Inc. d/b/a Family Labels
Correspondence Address	Mary Margeret L. O'Donnell Rader, Fishman & Grauer, PLLC 39533 Woodward Avenue, Suite 140 Bloomfield Hills, MI 48304 tmdocketing@raderfishman.com, mmlo@raderfishman.com
Submission	Reply in Support of Motion
Filer's Name	Mary Margaret L. O'Donnell
Filer's e-mail	tmdocketing@raderfishman.com, mmlo@raderfishman.com
Signature	/Mary Margaret L. O'Donnell/
Date	02/08/2006
Attachments	Petitioner's Reply to Respondent's Opposition Brief.pdf (7 pages)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

LIVE IN LOVE, INC.,
d/b/a FAMILY LABELS,

Petitioner,

v.

LAURA N. SHEPPARD,
d/b/a SIGNS OF AFFECTION,

Respondent.

Cancellation No.: 92044526
Registration No.: 2,908,824
Mark: FAMILY DOODLES
Our Ref: 65913-0022

**PETITIONER'S REPLY TO RESPONDENT'S "OPPOSITION"
TO PETITIONER'S MOTION
TO EXTEND DISCOVERY AND TESTIMONY PERIODS**

As permitted by Trademark Rule 2.127(a), Petitioner submits this filing in reply to Respondent's response to Petitioner's initial Motion To Extend Discovery And Testimony Periods ("Motion"). Although Respondent styles its paper as a "reply" and concedes that Respondent agrees to an extension (although not the one requested by Petitioner), Petitioner takes such filing as an opposition to Petitioner's Motion ("Opposition") and submits this Reply thereto.

Subsequent to Petitioner's filing of the Motion, but prior to the close of discovery, Respondent consented to a 90-day extension (see **Exhibit T** hereto). In its Opposition, Respondent states that despite Petitioner's impending maternity leave and despite Respondent's own delay in providing comments to the revised Protective Order, Respondent believes "no extension is necessary at all," that the request of an additional month after Petitioner's counsel's

estimated return to the office is “excessive and unnecessary,” but that it will nonetheless agree to an extension of the duration of Petitioner’s counsel’s maternity leave. See Opposition, p. 2.

Despite Respondent’s vacillating language, Respondent apparently does not contest that Petitioner has shown good cause for the 90-day extension for which Respondent grants consent. Thus, the only issue for the Board to determine is whether Petitioner has shown good cause for requesting an additional month, so that discovery can be completed upon Petitioner’s counsel’s anticipated return to the office following her maternity leave.

1. PETITIONER HAS SHOWN GOOD CAUSE.

a. Respondent Fails To Explain Why An Extension For Vacation Is Appropriate, But An Extension For Maternity Leave Is Not.

Respondent’s counsel acknowledges that he previously requested a 30-day extension due to vacations and other business matters. Respondent even informed Petitioner that if Petitioner did not consent to the extension allegedly necessitated by the vacations/business matters, the Board would “easily grant” Respondent’s motion for an extension. See **Exhibit B** to Motion. Despite Respondent’s determination that the Board would have “easily granted” an unconsented motion based on Respondent’s own “vacations,” Respondent incredibly asserts that the additional 30 days requested by Petitioner following a maternity leave (which Petitioner asserts is arguably at least as important as a vacation, although less restful) is unwarranted.

Respondent fails to explain how it might be prejudiced by a 120-day extension as opposed to the 90-day extension to which it consented. Further, Respondent dismisses Petitioner’s counsel’s (who is the responsible attorney assigned to this matter) explanation that the additional 30 days has been requested so that she may take depositions upon her return to the office following her maternity leave (see Motion p. 5 and **Exhibit S** thereto) on the basis of his

determination that other attorneys at Petitioner's counsel's office are "capable of handling this matter." Such assumption fails to take into consideration the firm's litigation and TTAB schedule, the impact on such schedule of Petitioner's counsel's maternity leave, the extra cost resulting from reassignment of this matter while a new attorney prepares for the depositions, and that other attorneys may not even be available to take such depositions.

The presence of other attorneys at Petitioner's counsel's firm thus does not negate a showing of good cause for an extension covering 30 additional days following Petitioner's counsel's maternity leave.

b. Petitioner's Motion Sufficiently Details The Relevant Facts.

Although Respondent seems to take issue with the length of Petitioner's 56 page Motion, Petitioner notes that it has met its burden of showing good cause under TBMP §509.01(a) by providing the relevant factual detail surrounding Petitioner's maternity leave and 48 pages of exhibits showing Petitioner's diligence in moving this matter forward.

c. Respondent's Delay Has Hindered Completion Of Discovery.

Further, Respondent's own failure to provide comments or execute the revised Protective Order has prevented the parties from exchanging the documents necessary to complete discovery and take depositions. Contrary to Respondent's claim in the Opposition, Petitioner did not wait until three days prior to the filing of the Motion to send a revised Protective Order to Respondent. Petitioner sent the same revised Protective Order to Respondent in October 2005, in November 2005 and, finally, again in January 2006. Likewise, although Respondent states "repeated requests" were made for such document, Respondent's Opposition does not provide

any detail or attach any support for such alleged “repeated requests.”¹ In fact, the only repeated requests were made by **Petitioner**, seeking Respondent’s comments and/or execution of the revised Protective Order!

d. Petitioner’s Extension Request Was Timely.

Finally, Respondent asserts that Petitioner’s extension request is somehow untimely. Petitioner notes that the Motion was filed on February 2, 2006 prior to the close of discovery on February 3, 2006, making it timely and making “good cause” the applicable standard. Further, given that Respondent’s counsel did in fact obtain instructions from Respondent to provide consent for a 90-day extension prior to the close of discovery (albeit after the filing of Petitioner’s Motion at the behest of Respondent’s counsel; see **Exhibit R** to Motion), it is clear that sufficient time was provided because Respondent did in fact obtain consent during that period. In addition, had Respondent legitimately believed that Petitioner had not provided enough lead time to permit Respondent to obtain his client’s consent for the requested extension, Respondent’s counsel could have granted consent for a very short time period (a day or a week) while he sought instructions, which may have obviated the need for Petitioner to file a Motion without express consent.

2. CONCLUSION.

Given that the additional 30 days following Petitioner’s counsel’s maternity leave will permit the responsible attorney for this matter to conduct the depositions, that Petitioner has set forth with particularity the detailed facts supporting the necessity of the 120-day extension, that Respondent has consented to at least a 90-day extension, that Respondent has failed to explain

¹ Respondent, having apparently forgotten that it did receive (and confirmed receipt of) Petitioner’s discovery responses (which were sent along with the same revised Protective Order in October and again in November 2005),


why the additional 30 days following a maternity leave is somehow excessive or will cause unnecessary delay, Petitioner requests a 120-day extension of the Discovery and Testimony Periods and that the new periods be set to run from the date of the Board's decision on the Motion.

Respectfully submitted,

RADER, FISHMAN & GRAUER PLLC

Dated: February 8, 2006

By:


Mary Margaret L. O'Donnell
Attorney for Petitioner
39533 Woodward Avenue, Suite 140
Bloomfield Hills, Michigan 48304
Telephone (248) 594-0600
Facsimile (248) 594-0610

CERTIFICATE OF TRANSMITTAL

I hereby certify that this correspondence is being electronically transmitted in PDF format to the Trademark Trial and Appeal Board through the Electronic System for Trademark Trials and Appeals (ESTTA) on the following date:

Dated: February 8, 2006


Mary Margaret L. O'Donnell

CERTIFICATE OF SERVICE

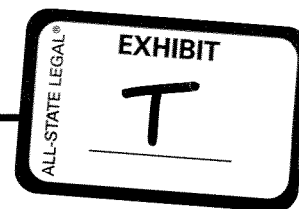
I hereby certify that a copy of the foregoing Motion been served upon the following party as noted below via e-mail to mharris@digital-trademarks.com and via United States Postal Service first class mail with postage fully pre-paid on February 8, 2006:

Marc Harris
Harris Chawla LLC
500 N. Michigan Avenue, Ste. 300
Chicago, Illinois 60611


Mary Margaret L. O'Donnell

requested that Petitioner again forward such responses in January 2006. Thus, this additional request related to Petitioner's discovery responses and not to any request for the Protective Order.

Mary Margaret L. O'Donnell



From: mharris@digital-trademarks.com
Sent: Friday, February 03, 2006 6:37 PM
To: Mary Margaret L. O'Donnell
Cc: mharris@digital-trademarks.com; Inter Partes Paralegals; Kristin L. Murphy; Linda E. Sudzina
Subject: Re: Extension Request

Mary Margaret:

We discussed earlier today the extension request. Our client has agreed to a three month extension. We will respond to your unconsented motion accordingly and will forward the outstanding PO to your attention early next week. In the meantime, should you have any questions, please do not hesitate to contact me. Thank you.

Marc Harris
Harris Chawla LLC
P: 312-321-4778
F: 312-577-0928

Mary Margaret L. O'Donnell writes:

> 65913-0022
>
> Marc:
>
> A copy of the motion we filed today in this matter is attached. It
> has also been served on you by First Class Mail. We have requested a
> telephone conference with the interlocutory attorney.
>
> Best regards,
>
> Mary Margaret
>
>
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>
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> please DO NOT read, copy or distribute the message or any attachment.
> Please reply to the sender that you received the message in error and
> delete it. Thank you.
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